



ST. HELENA

CHAPTER 103

MOTOR VEHICLES (THIRD PARTY INSURANCE) ORDINANCE

Non-authoritative Consolidated Text

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Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290) 2454; email pa.lawofficers@legalandlands.gov.sh]¹

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No Subsidiary Legislation has been made under this Ordinance

¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

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CHAPTER 103**MOTOR VEHICLES (THIRD PARTY
INSURANCE) ORDINANCE**

(Ordinances 3 of 1962, 3 of 1985, 5 of 1985, 6 of 1990, 7 of 2013, 16 of 2016 and 17 of 2016)

AN ORDINANCE TO PROVIDE FOR COMPULSORY INSURANCE AGAINST THIRD-PARTY RISKS
ARISING OUT OF THE USE OF MOTOR VEHICLES.

Commencement

[16 October 1962]

Short title

1. This Ordinance may be cited as the Motor Vehicles (Third Party Insurance) Ordinance.

Interpretation

2. (1) In this Ordinance—
“**driver**”, “**motor vehicle**”, “**owner**” (in relation to a motor vehicle which is the subject of a hiring agreement or a hire-purchase agreement) “**public service vehicle**” and “**road**”

have the meanings respectively assigned to them by section 2 of the Road Traffic Ordinance;

“driving licence” means a licence granted in pursuance of the provisions of Part IV of the Road Traffic Ordinance²;

“insurer” means a person approved by the Governor by notice in the *Gazette* as an insurer for the purposes of this Ordinance;

“policy”, except where the context otherwise requires, means a policy of insurance which complies with the requirements of this Ordinance, and includes a cover note.

(2) References to Jamestown and to the Superintendent of Police shall in relation to an accident which occurs in Ascension be construed as references to Georgetown and to a police officer.

Users of motor vehicles to be insured against third party risks

3.³ (1) (a) Subject to the provisions of this Ordinance it shall be unlawful for any person to use or to cause or permit any other person to use a motor vehicle on a road unless there is in force a policy in relation to the use of the vehicle by that person, or that other person as the case may be.

(b) A person charged with using a motor vehicle in contravention of this section shall not be convicted if he proves that the vehicle did not belong to him and was not in his possession under a contract of hiring or of loan, that he was using the vehicle in the course of his employment and that he neither knew nor had reason to believe that there was not in force in relation to the vehicle such a policy of insurance as is mentioned in paragraph (a).

(2) (a) Any person who acts in contravention of this section is guilty of an offence for which the maximum penalty on conviction is a fine of £1,500 or imprisonment for a term of six months, or both, and a person convicted of an offence under this section may be disqualified from holding or obtaining a driving licence for such period as the court may determine.

(b) The provisions of Part IV of the Road Traffic Ordinance relating to persons disqualified from holding or obtaining a driving licence shall apply to any person disqualified in accordance with this subsection.

(3) This section shall not apply to the lawful use of a motor vehicle in the public service of the Crown or of the Government of the United States of America.

Requirements in respect of policies

4.⁴ A policy of insurance which complies with the requirements of this Ordinance is a policy of insurance which—

(a) is issued by an insurer; and

(b) insures such person or persons or classes of persons as may be specified therein in respect of any liability which may be incurred by any of such persons in respect of the death or bodily injury of any person caused by or arising out of the use on a road of a motor vehicle to which the policy relates:

Provided that such a policy shall not be required to cover—

(i) liability in respect of the death or bodily injury, in either case arising out of and in the course of his employment, of a person in the employment of a person insured by the policy; or

² Cap. 101

³ Section 3 amended by Ord. 3 of 1985, Ord. 5 of 1985 and Ord. 7 of 2013

⁴ Section 4 amended by Ord. 5 of 1985 and Ord. 17 of 2016

- (ii) except in the case of a public service vehicle licensed to carry passengers and of a motor vehicle in which passengers are carried by reason or in pursuance of a contract of employment with a person insured by the policy, liability in respect of the death or bodily injury of any person being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence out of which any claim arises; or
- (iii) any contractual liability; or
- (iv) liability in respect of one claim or a series of claims arising out of one event exceeding £250,000; or
- (v) ...
- (vi) liability in respect of any judgement or order delivered or obtained from any court other than the St. Helena Magistrate's Court or Supreme Court of St. Helena.

Liability of insurer notwithstanding other law

5. Notwithstanding any rule of law or any provision of any enactment (other than this Ordinance) to the contrary, a person who issues a policy shall be liable to indemnify any person specified, or of a class specified, in the policy, in respect of any liability which the policy purports to cover in relation to that person or class.

Certain conditions of policies to be of no effect

6. (1) Any condition in a policy providing that no liability shall arise under the policy or that any liability so arising shall cease if some specified thing is done or omitted to be done after the happening of any event giving rise to a claim under the policy shall be of no effect as respects such liabilities as are required by section 4(b) of this Ordinance to be covered by a policy:

Provided that nothing in this subsection shall be taken to render void any provision in a policy requiring the person insured to repay to the insurer any sum which the insurer may have become liable to pay under the policy or which has been applied to the satisfaction of the claims of third parties.

(2) So much of any policy as purports to restrict the insurance of the person insured by reference to—

- (a) the age or physical or mental condition of persons driving the vehicle; or
- (b) the condition of the vehicle; or
- (c) the number of persons that the vehicle carries; or
- (d) the weight or physical characteristics of the goods that the vehicle carries; or
- (e) the times at which or the areas within which the vehicle is used; or
- (f) the horse-power, cylinder capacity or value of the vehicle; or
- (g) the carrying on the vehicle of any apparatus; or
- (h) the carrying on the vehicle of any means of identification other than means of identification required to be carried by or under the Road Traffic Ordinance,

shall be of no effect as respects such liabilities as are required by section 4(b) of this Ordinance to be covered by a policy:

Provided that nothing in this subsection shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this subsection shall be recoverable by the insurer from that person.

Insurance required before issue or renewal of motor vehicle licence

7.⁵ [The licence required for a motor vehicle by section 10 of the Road Traffic Ordinance shall not be issued or renewed unless the person applying for the issue or renewal thereof satisfies the licensing officer appointed for the purposes of the said Ordinance—

- (a) that at the time when the licence or renewal comes into operation there will be in force a policy complying with the requirements of this Ordinance in relation to the use of the motor vehicle by the applicant or by other persons on his order or with his permission; or
- (b) that no such policy is required by this Ordinance.]

Information required after accident

8.⁶ [(1) (a) If owing to the presence of a motor vehicle on a road an accident occurs involving personal injury to another person, the driver of the vehicle shall as soon as possible and in any case not more than twenty-four hours after the accident report the accident at the police station in Jamestown and produce evidence to the satisfaction of the Superintendent of Police that the vehicle was not being used in contravention of section 3 of this Ordinance, and if he fails to do so he shall be liable to a fine not exceeding £50.

(b) The provisions of paragraph (a) shall be in addition to and not in derogation of the provisions of section 38 of the Road Traffic Ordinance (which relates to accidents whereby damage or injury is caused to any person, vehicle or animal).

(2) The owner of a motor vehicle shall give such information as he may be required by or on behalf of the Superintendent of Police to give, for the purpose of determining whether the vehicle was being used in contravention of section 3 of this Ordinance on any occasion when the driver was required to produce evidence as in subsection (1), and if the owner fails to do so he shall be liable to a fine not exceeding £20.]

Saving of rights on death of person insured

9. (1) The rights of any person in respect of any liability incurred by an insured shall in the event of the death of the insured and notwithstanding any enactment to the contrary be preserved to and enforceable by such person against the personal representatives of the insured in the same manner and to the same extent as such rights would have been enforceable against the insured if he had survived, and the provisions of section 5 of this Ordinance shall apply accordingly.

(2) In this section “insured” means a person insured in accordance with the provisions of this Ordinance.

Persons against whom claims are made to give information as to insurance

10. (1) A person against whom a claim is made in respect of any such liability as is required by this Ordinance to be covered by a policy shall on demand by or on behalf of the person making the claim state whether or not he was insured in respect of that liability by a policy having effect for the purposes of this Ordinance, and if not whether he would have been so insured if the insurer had not avoided or cancelled a policy, and if he was or would have

⁵ Section 7 to be repealed by Ord 16 of 2016 with effect from 1 April 2017.

⁶ Section 8 to be repealed by Ord 16 of 2016 with effect from 1 April 2017.

been so insured he shall give such particulars with respect to the policy as may reasonably be demanded for the purposes of the claim.

[(2)⁷ A person who without reasonable excuse fails to comply with the provisions of this section or wilfully makes any false statement in reply to any such demand as aforesaid shall be liable to a fine not exceeding £20.]

Duty to surrender policy on cancellation and to inform police

11.⁸ [Where a policy has been effected and it is cancelled by mutual consent or by virtue of any provision in the policy, the person insured by the policy shall within seven days of the taking effect of the cancellation, surrender the policy to the insurer or, if it has been lost or destroyed, make a statutory declaration to that effect, and in every such case and if the policy expires and is not renewed shall forthwith inform the Superintendent of Police in writing of the cancellation or expiry of the policy, as the case may be, and any person who fails to comply with the requirements of this section shall be liable to a fine not exceeding £20.]

Duty of insurers to satisfy judgments

12. (1) If after a policy has been effected in favour of any person judgment in respect of any such liability as is required by this Ordinance to be covered by a policy (being a liability covered by the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy the insurer shall subject to the provisions of this section pay to the person or persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under the foregoing provisions of this section—

- (a)** in respect of any judgment unless before or within ten days after the commencement of the proceedings in which the judgment was given the insurer had notice of the bringing of the proceedings; or
- (b)** in respect of any judgment so long as execution thereon is stayed pending an appeal; or
- (c)** in connexion with any liability if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability the policy was cancelled by mutual consent or by virtue of any provision contained therein.

(3) No sum shall be payable by an insurer under the foregoing provisions of this section if in an action commenced before or within three months after the commencement of the proceedings in which the judgment was given he has obtained a declaration that apart from any provisions contained in the policy he is entitled to avoid it on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless before or within ten days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the

⁷ Section 10(2) to be repealed by Ord 16 of 2016 with effect from 1 April 2017.

⁸ Section 11 to be repealed by Ord 16 of 2016 with effect from 1 April 2017.

nondisclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled to be made a party thereto.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would apart from the provisions of this section be liable under the policy in respect of that liability he shall be entitled to recover the excess from that person.

(5) In this section the expression “**material**” means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and if so at what premium and on what conditions, and the expression “**liability covered by the terms of the policy**” means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

Registrar or Clerk of Court to give notice to insurer

13. It shall be the duty of the Registrar of the Supreme Court or the Clerk to the Magistrates’ Court within ten days of the commencement by a third party injured by a motor vehicle required to be insured by this Ordinance of any proceedings in such Court to give notice to the insurer of such proceedings.

Policies covering more than one vehicle

14. Where a policy relates to more than one motor vehicle—

- (a) the policy shall be of no effect for the purposes of this Ordinance in relation to any of such vehicles unless the insurer issues a certificate in favour of the person by whom the policy is effected certifying that it is a vehicle to which a policy relates;
- (b) references in sections 11 and 12 of this Ordinance to the loss and destruction of policies shall be construed as references to the loss and destruction of such certificates, and references in the said sections to the cancellation and surrender of policies shall be construed as references to the cancellation and surrender of such certificates and copies thereof relating to vehicles in respect of which the policy has ceased or is intended to cease to have effect.

Regulations

15. The Governor in Council may make regulations for carrying the purposes of this Ordinance into effect, and such regulations may prescribe penalties for the contravention thereof.

ENDNOTES

- 1. This Ordinance applies to Saint Helena.
- 2. This Ordinance applies to Ascension with the modifications specified in Ordinance A2 of 1985, and A4 of 1986, namely—

Repeal and replacement of section 3

- 2. Section 3(1) of the principal Ordinance is hereby repealed and in place thereof the following subsection shall have effect—

“3. (1) (a) Subject to the provisions of this Ordinance it shall be unlawful for any person to use or to cause or permit any other person to use a motor vehicle on a road unless there is in force a policy in relation to the use of the vehicle by that person, or that other person as the case may be.

- (b) A person charged with using a motor vehicle in contravention of this section shall not be convicted if he proves that the vehicle did not belong to him and was not in his possession under a contract of hiring or of loan, that he was using the vehicle in the course of his employment and that he neither knew nor had reason to believe that there was not in force in relation to the vehicle such a policy of insurance as is mentioned in paragraph (a).”.

Minor amendments

3. The amendments specified in the second column of the Schedule, being amendments of a minor nature, shall be made to the provisions of the principal Ordinance specified in the first column of that Schedule.

SCHEDULE

<i>Section Reference</i>	<i>Amendments</i>
sections 2, 3, 6, 7 and 8	For the words “Road Traffic Ordinance” there shall be substituted “Road Traffic (Ascension) Ordinance”.
section 7	Delete “section 11 of the Road Traffic Ordinance” and substitute “section 9(1) of the Road Traffic (Ascension) Ordinance”.
section 8	<i>Repealed.</i>

3. This Ordinance when enacted in 1962 specified that it did not apply to Tristan da Cunha.
Section 27 of the Road Traffic (Tristan da Cunha) Ordinance requires motor vehicle insurance.
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